



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2013-0823; FRL-9911-06-Region 9]

**Interim Final Determination to Defer Sanctions, State of
California, Los Angeles-South Coast Air Basin**

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination to defer the imposition of sanctions based on a proposed approval published elsewhere in this Federal Register of a state implementation plan revision submitted by the State of California to meet the vehicle miles traveled emissions offset requirement under the Clean Air Act for the 1-hour ozone and 1997 8-hour ozone national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin (South Coast).

DATES: This interim final determination is effective on [Insert date of publication in the Federal Register]. However, comments will be accepted until [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2013-0823, by one of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the

on-line instructions.

- E-mail: ungvarsky.john@epa.gov.
- Mail or deliver: John Ungvarsky, Air Planning Office (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3963, ungvarsky.john@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

I. Background

On March 28, 2013 (78 FR 18849), we published a final action to disapprove revisions to the state implementation plan (SIP) submitted by the State of California to demonstrate compliance with the vehicle miles traveled (VMT) emissions offset requirement under Clean Air Act (CAA) section

182(d)(1)(A) with respect to the 1-hour ozone and 8-hour ozone NAAQS in the South Coast nonattainment area. Under section 110(k) of the CAA, we disapproved these plan elements because they reflect an approach to showing compliance with section 182(d)(1)(A) that was rejected by the Ninth Circuit Court of Appeals in *Association of Irrigated Residents v. EPA*. This disapproval action became effective on April 29, 2013 and started a sanctions clock for imposition of offset sanctions 18 months after April 29, 2013 and highway sanctions 6 months later, pursuant to CAA section 179 and our regulations at 40 CFR 52.31. As such, offset sanctions will be applied on October 29, 2014, and highway sanctions will be applied on April 29, 2015, unless EPA determines the disapproval has been corrected.

On February 13, 2013, the State of California submitted, as a revision to the California SIP, the *Final 2012 Air Quality Management Plan* (2012 South Coast AQMP) for the South Coast Air Basin (2012 South Coast AQMP). The 2012 South Coast AQMP submittal includes *Appendix VIII, Vehicle Miles Traveled Emissions Offset Demonstration* ("Appendix VIII"). On April 3, 2014, the State of California submitted a technical supplement to the VMT offset demonstrations in Appendix VIII of the 2012 South Coast AQMP.

In the Proposed Rules section of today's Federal Register, we are proposing to approve Appendix VIII and the related technical supplement as a SIP revision because we believe that it corrects the deficiency identified in our March 28, 2013 disapproval action. Based on today's proposed approval, we are taking this interim final rulemaking action, effective on publication, to defer the imposition of the offset sanctions and highway sanctions triggered by our March 28, 2013 disapproval.

EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full approval of the South Coast VMT Emissions Offset Demonstrations in Appendix VIII, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 52.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to defer the imposition of sanctions associated with our disapproval of revisions to the California SIP based on our concurrent proposal

to approve the State's revision to the Los Angeles-South Coast portion of the California SIP as correcting the deficiency that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions

clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and

Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefore, and established an effective date of [Insert date of publication in the Federal Register]. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of

Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental regulations,
Nitrogen dioxide, Ozone, Reporting and recordkeeping
requirements, Volatile organic compounds.

May 5, 2014.
Dated:

Jared Blumenfeld,
Regional Administrator,
Region IX.

[FR Doc. 2014-11509 Filed 05/22/2014 at 8:45 am; Publication
Date: 05/23/2014]